NO. 83-859

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

CHARLES R. CARNEY,

Respondent.

BRIEF ON THE MERITS

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PETITION FOR CERTIORARI FILED NOVEMBER 25, 1983
CERTIORARI GRANTED MARCH 19, 1984

QUESTIONS PRESENTED

1. Do the Fourth and Fourteenth Amendments to the United States Constitution permit law enforcement officers to conduct a search of a fully mobile "motor home" without a search warrant, pursuant to the vehicle exception to the warrant requirement created by this Court in Carroll v. United States (1925) 267 U.S. 132, 149, when the officers have probable cause to believe the motor home contains that which is lawfully subject to seizure?

2. Is the underlying basis for the vehicle exception inherent mobility, as this Court announced in Carroll, or did the California Supreme Court correctly interpret the United States Constitution when it repudiated the Carroll reasoning and announced the underlying

basis for the vehicle exception as reduced expectation of privacy?

3. If a motor home is entitled to different treatment from other vehicles, how does one distinguish between a motor home and any other vehicle for purposes of the vehicle exception?

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OPINIONS BELOW

The opinion of the California Supreme Court reversing the order of probation is reported in People v. Carney (1983) 34 Cal.3d 597 [194 Cal.Rptr. 500; 668 P.2d 807], and is included as Appendix A to the petition for writ of certiorari.

JURISDICTION

The judgment of the California Supreme Court was filed on September 8, 1983. (Appen. A to Petn. for Cert.) A timely petition for rehearing was denied on October 6, 1983. (Appen. B to Petn. for Cert.) The petition for writ of certiorari was docketed November 25, 1983, within 60 days after the petition for rehearing was denied. The petition for writ of certiorari was granted March 19, 1984. This Court's jurisdiction is invoked under 28 U.S.C. section 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendments Four and Fourteen.

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STATEMENT OF THE CASE

In an information filed by the District Attorney of San Diego County on September 14, 1979, respondent, Charles Richard Carney, was charged with a single count of possession of marijuana for sale. (JA 4-5; CT 1.)[1/]

Respondent's motion to suppress evidence taken from the search of his motor home was submitted on the transcript of the preliminary hearing and

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1. The designation "JA" refers to the Joint Appendix. The designation "CT" refers to the Clerk's Transcript on appeal. The designation "RT" refers to the Reporter's Transcript on appeal.

subsequently denied on October 19, 1979. (JA 6-8; CT 41.)

On November 5, 1979, respondent withdrew his not guilty plea and entered a plea of nolo contendere to the charge. On January 8, 1980, respondent was granted probation for a period of three years. (CT 34-36, 44.)

Respondent's conviction was affirmed by the California Court of Appeal on March 18, 1981. On September 8, 1983, the California Supreme Court reversed respondent's grant of probation.

A. Facts Relating to the Offense[2]

While investigating activities

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2. The facts are taken from the Reporter's Transcript of the preliminary examination held on September 5, 1979. This testimony served as the sole evidentiary basis for the trial court's decision to deny respondent's motion to suppress evidence.

in downtown San Diego on May 31, 1979, Drug Enforcement Administration (DEA) Agent Robert Williams observed respondent, Charles Carney, approach a young Mexican boy. Agent Williams watched as respondent and the boy got into a Dodge Mini Motor Home which was parked in a lot at 4th and G Streets. (JA 9-12; RT 4-8, 10.)

Agent Williams noted the license number of the motor home and recalled he had, on numerous occasions, received information that this vehicle was involved in drug activity. The information was received by letter and telephone contacts from an organization known as "WETIP" (We Turn In Pushers). Agent Williams knew the motor

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home belonged to Lee Bowman. Williams also knew an unidentified man had taken Bowman's place in dealing narcotics, and exchanging marijuana for sex with young boys, from the motor home. Williams estimated the age of the boy respondent escorted into the motor home to be 15 or 16, maybe 17. (JA 12; RT 8-10, 14-15, 51, 55.)

The boy emerged from the motor home approximately an hour and a quarter after entry. Williams, along with Agents Clem and Peralta, followed the boy, made contact with him and informed the boy they were agents conducting a narcotics investigation. In response to Williams' questions, the boy stated the "older man" asked him to have sex with him. He allowed the older man to orally copulate him in exchange for a small bag of marijuana. JA 12-15; (RT 15-22.)

Williams took the boy back to the motor home and had the boy knock on the door. When respondent opened the door and stepped out of the motor home, Williams, Clem and Peralta identified themselves as agents. Agent Clem stepped up one step and looked inside the motor home to see if there were any other occupants in the vehicle. Clem observed, in plain view on a table inside the motor home, a large bag of marijuana, a small bag of marijuana, some Ziploc bags and a scale. When Clem informed Williams of his observations, Williams placed respondent under arrest. Photographs of the interior of the motor home were taken by Agent Williams. The vehicle was then driven to the National City office of the Narcotics Task Force for an inventory. During the inventory search marijuana

was found inside the cupboard above the table and inside the refrigerator. (JA 15-22; RT 23-27, 29, 34-35, 40-49, 72-73.)

B. Judgment of the California Supreme Court

On September 8, 1983, the California Supreme Court reversed the order granting probation, holding that a motor home is fully protected by the United States Constitution's Fourth Amendment guarantee against unreasonable search and seizure and is not subject to the "automobile exception" to the warrant requirement. (People v. Carney, supra, 34 Cal.3d 597, 610 [194 Cal.Rptr. 500, 668 P.2d 807]; appen. A to Petn. for Cert., p. 30.) Underlying the California Supreme Court's decision is the premise that inherent mobility has been supplanted by reduced expectation of privacy as the primary reason for the

"automobile exception." (People v. Carney, supra, 34 Cal.3d at pp. 604-605 [194 Cal.Rptr. 500, 668 P.2d 807]; appen. A to Petn. for Cert., pp. 11-17.)

SUMMARY OF ARGUMENT

The history of the vehicle exception demonstrates that, since its inception, mobility has served to independently justify a warrantless search of a vehicle. When the exception was first recognized by this Court in Carroll v. United States (1925) 267 U.S. 132, mobility was the sole justification for the exception. It is the inherent ability of a vehicle to move which distinguishes the search of a vehicle from the search of a building.

Inherent mobility has remained an independent justification for the vehicle exception despite recognition of additional justifications based upon diminished expectations of privacy, pervasive regulatory schemes and administrative burdens. These additional justifications do not detract from the

inherent mobility of the vehicle nor do they detract from mobility as an independent justification for the exception.

In United States v. Ross (1982) 456 U.S. 798, the Court's examination of the Carroll decision reinforced inherent mobility as an independently sufficient justification for the vehicle exception. The inherent mobility associated with a vehicle justifies the application of the vehicle exception even when the object of the search is a "motor home" capable of supporting a residential use.

This Court has recognized the critical necessity for providing law enforcement officers with "bright line" guidance in search and seizure situations. "Bright lines" are necessary so officers can apply the underlying constitutional abstractions confidently and consistently in the practical

pursuit of their daily business. Mobility presents a bright line approach to vehicle searches. This bright line guidance is in contrast to the California Supreme Court's rule which is incapable of definition or rational application because it is based on the subjective analysis of vehicle configuration and potential current use. Such a rule is unworkable when one considers law enforcement will come in contact daily with every imaginable vehicle in countless situations.

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ARGUMENT

I

THE HISTORY OF THE VEHICLE EXCEPTION DEMONSTRATES THAT, SINCE ITS INCEPTION, MOBILITY HAS SERVED TO INDEPENDENTLY JUSTIFY A WARRANTLESS SEARCH OF A VEHICLE

A. Introduction

In this case the court must examine the analytical underpinnings of the vehicle exception to the Fourth Amendment's general search warrant requirement. This examination is required because of the California Supreme Court's rejection of mobility (and therefore inherent exigency) as the basis, supplanting it with a subjective and elusive "reduced expectation of privacy" basis. As shall be demonstrated, the practical difference is both enormous and critical.

The Fourth Amendment's guarantee against unreasonable searches and seizures has been interpreted to require that searches of private property normally be performed pursuant to a search warrant. (Arkansas v. Sanders (1979) 442 U.S. 753, 758, disapproved in part on other grounds in United States v. Ross, supra, 456 U.S. at p. 824.) Thus, warrantless searches are per se unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions. (Mincey v. Arizona (1978) 437 U.S. 385, 390.)

This case concerns one of these exceptions, recognized at least since Carroll v. United States, supra, 267 U.S. at p. 149, which arises when an automobile or other vehicle is stopped and the police have probable cause to believe it

contains evidence of a crime. (Colorado v. Bannister (1980) 449 U.S. 1, 3.)[3/] Though petitioner will quarrel with the title, this exception has come to be known as the "automobile exception." (See, Arkansas v. Sanders, supra, 442 U.S. at p. 757.)[4/]

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3. Other exceptions to the warrant requirement include: search incident to arrest, Chimel v. California (1969) 395 U.S. 752; consent, Schneckloth v. Bustamonte (1973) 412 U.S. 218; plain view, Harris v. United States (1968) 390 U.S. 234; hot pursuit Warden v. Hayden (1967) 387 U.S. 294; stop and frisk, Terry v. Ohio (1968) 392 U.S. 1; emergency, Michigan v. Tyler (1978) 436 U.S. 499; and prevention of loss or destruction of evidence, Schmerber v. California (1966) 384 U.S. 757.

4. The term "automobile exception" is a misnomer. Use of the term "automobile exception" has served to create confusion in the courts and in the minds of officers in determining when a warrant is required in search cases. The "automobile exception" applies to vehicles and vessels of all types and configurations and thus, is more properly referred to as a "vehicle exception."

The exceptions to the warrant requirement have been established where

(Footnote 4 cont.)

(See State v. Bouchles (Me. 1983) 457 A.2d 798, 799-800, search of a van; United States v. Mesa (5th Cir. 1981) 660 F.2d 1070, 1073, 1078, search of sailing vessel, a van, and two campers; State v. Million (Ariz. 1978) 583 P.2d 897, 902-903 [120 Ariz. 10], search of a motor home; United States v. Worthington (5th Cir. 1977) 544 F.2d 1275, 1280, search of an airplane; United States v. Lovenguth (9th Cir. 1975) 514 F.2d 96, 99, search of a camper; and, United States v. Bozada (8th Cir. 1973) 473 F.2d 389, 391, search of a tractor-trailer.

The California Supreme Court's mistaken interpretation of the Carroll rule as creating an "automobile exception" instead of a vehicle exception appears to be the basis for its holding in the Carney case. The majority goes to great lengths in an attempt to distinguish between an automobile, which would be covered by an "automobile exception," and a motor home, which the court calls a "hybrid" between an automobile and a house which the California court argues, would not come under an "automobile exception." (People v. Carney, supra, 34 Cal.3d at p. 604-610; [94 Cal.Rptr. 500, 668 P.2d 807] appen. A to Pet. for Cert. pp. 9-31.) Had the California Supreme Court correctly characterized the Carroll rule as creating a vehicle exception, it would have been forced to

it was concluded the public interest required some flexibility in the application of the general rule that a valid warrant is a prerequisite for a search. (Arkansas v. Sanders, supra, 442 U.S. at p. 759.) These exceptions have been carefully drawn and generally are characterized by clear and coherent guidelines, or "bright lines," which are critical to the consistent and efficient application of these constitutional abstractions by the nation's constables.

The vehicle exception was established due to the unique ability of a vehicle to move from one place to another. Thus, the ability to move creates an exigent circumstance which

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(Footnote 4 cont.)

affirm the Carney case. The motor home involved in this case is a vehicle, as capable of movement as any automobile or other vehicle.

serves to excuse the warrant requirement where there is probable cause to believe a vehicle contains seizable materials. (Carroll v. United States, supra, 267 U.S. at pp. 149-156.)

B. Mobility Served as the Sole Justification for the Vehicle Exception When it was First Recognized by this Court in Carroll v. United States.

Any examination of the vehicle exception must necessarily begin with an examination of Carroll v. United States, supra, 267 U.S. 132. The Carroll Court engaged in an extensive analysis of the history of warrantless searches for contraband concealed in vessels and vehicles. (Id., at pp. 150-153.) The Court concluded:

> "We have made a somewhat extended reference to these statutes to show that the guaranty of freedom from unreasonable searches and

seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

> "Having thus established that contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant, we come now to consider under what circumstances such search may be made. . . ." (Carroll v. United States, supra, 267 U.S. at p. 153, emphasis added.)

The Carroll Court reasoned this history justified a clearly defined vehicle exception to the Fourth Amendment's warrant requirement.

> "On reason and authority the true rule is that if the

search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid. The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens." (Carroll v. United States, supra, 267 U.S. at p. 149, emphasis added.)

Carroll did not distinguish between vehicles because of their configuration or present or potential uses. Rather, the exigency due to the vehicle's ability to move justified the exception. (See, United States v. Ross (1982) 456 U.S. 798, 806-807.)

Between 1925 and 1970, when the Court came down with the watershed decision of Chambers v. Maroney (1970)

399 U.S. 42, the Court had few opportunities to apply the vehicle exception.[5/]

A unanimous Court applied Carroll to hold that passage of the car from the street to the garage did not affect the right to search the vehicle. (Scher v. United States (1938) 305 U.S. 251, 254-255.) Though it was not moving, it remained mobile.

The Court approved the search of a vehicle transported to the police station in Chambers v. Maroney, supra,

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5. In two of those decisions the Court simply reiterated the fact probable cause was a necessary predicate to justify the warrantless search of a vehicle. (Husty v. United States (1931) 282 U.S. 694, 700; Dyke v. Taylor Implement Co. (1968) 391 U.S. 216, 221-222.) In Dyke, the Court refused to apply the exception to a mobile vehicle because the officers lacked probable cause. Id., at pp. 221-222.) In a third case, this Court rejected the argument a vehicle constituted a place where one had a legitimate privacy right. (Brinegar v. United States (1949) 338 U.S. 160, 176-177.)

399 U.S. 42, by concluding there was probable cause to search at the time the car was seized and the probable cause and inherent mobility of the vehicle still obtained at the police station. (Chambers v. Maroney, supra, 399 U.S. at pp. 50-52.) The inherent mobility of the vehicle caused the Court to characterize the opportunity to search a vehicle as "fleeting." (Ibid.) Furthermore, mobility created a circumstance where, in most cases, the probable cause to search a particular vehicle for a particular article will be unforeseeable. (Id., at pp. 50-51.) Thus, as Chambers pointed out, mobility was the source of numerous problems associated with the search of a vehicle.

An argument was presented to the Court in Chambers that police should be allowed only to immobilize a vehicle

while they sought a warrant. In response, the Court stated:

> "Arguably, because of the preference for a magistrate's judgment, only the immobilization of the car should be permitted until a search warrant is obtained; arguably, only the 'lesser' intrusion is permissible until the magistrate authorizes the 'greater.' But which is the 'greater' and which the 'lesser' intrusion is itself a debatable question and the answer may depend on a variety of circumstances. For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given probable cause to search, either course is reasonable under the Fourth Amendment." (Chambers v. Maroney, supra, 399 U.S. at pp. 51-52.)[6]

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6. For an analysis of the competing interests involved in seizing a vehicle versus searching the vehicle, see, Note, Warrantless Searches and Seizures of Automobiles (1974) 87 Harvard L. Rev. 835, 840-842.

C. Inherent Mobility has Remained an Independent Justification for the Vehicle Exception Despite the Articulation of Additional Justifications.

In the years following the Court's decision in Chambers, the vehicle exception was frequently discussed. Consistently appearing in cases involving the vehicle exception is the concept there is a constitutional difference, for purposes of warrantless searches, between structures and vehicles. The reason for the difference is the inherent mobility of the vehicles.7/

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7. (See, United States v. Ross, supra, 456 U.S. at pp. 805-807; Robbins v. California (1981) 453 U.S. 420, 424 (plurality), overruled on other grounds in United States v. Ross, supra, at p. 824; Arkansas v. Sanders, supra, 442 U.S. at p. 761, disapproved in part in United States v. Ross, supra, at p. 824; United States v. Chadwick (1977) 433 U.S. 1, 12: South Dakota v. Opperman (1976) 428 U.S. 364, 367; Cardwell v. Lewis (1974) 417 U.S. 587, 589-590 (plurality); Cady v. Dombrowski (1973)

The conclusion that ability to move is the critical inquiry and not actual movement is evident from the fact the Court has continued to apply the vehicle exception to justify warrantless searches of movable vehicles. (Florida v. Meyers (1984) ____U.S.____ [44 CCH S.Ct. Bull.P. B2343, B2344-B2345]; Michigan v. Thomas (1982) 458 U.S. 259, 261; Texas v. White (1975) 423 U.S. 67, 68; Chambers v. Maroney, supra, 399 U.S. at p. 52.)

A heightened awareness of privacy rights caused this Court to examine and reject those rights as justifying an end to the vehicle exception. Instead diminished expectations of privacy provided a second justification for the

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(Footnote 7 cont.)

413 U.S. 433, 439-440; Coolidge v. New Hampshire (1971) 403 U.S. 443, 459-460 (plurality).)

exception. (See Katz v. United States (1967) 389 U.S. 347; Arkansas v. Sanders, supra, 442 U.S. at p. 761; United States v. Chadwick, supra, 433 U.S. at pp. 12-13; South Dakota v. Opperman, supra, 428 U.S. at pp. 367-369; Cardwell v. Lewis, supra, 417 U.S. at p. 590 (plurality).[8/] Privacy analysis requires the identification of various factors associated with vehicular travel which serve to reduce privacy in comparison with a structure or residence. Because individual factors are important in such an analysis, the case law has developed a grocery list of such factors. For example, the regulatory scheme

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8. In Sanders and Chadwick, the Court's discussion of privacy expectations in vehicle searches was used as a comparison for the privacy expectations one has in a closed container. Both Sanders and Chadwick were container cases, not vehicle cases.

governing vehicle travel lessens one's expectation of privacy.

> ". . . Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order." (South Dakota v. Opperman, supra, 428 U.S. at p. 368; see, Cady v. Dombrowski, supra, 413 U.S. at p. 442.)

The list of factors published is by no means exhaustive. The articulation of additional factors is limited only by the imaginative capacity of this country's finest legal minds.

Another justification for allowing a warrantless search of a vehicle is premised on the difficulty law

enforcement might have in providing a seized vehicle with secure storage. A vehicle's size, value and inherent mobility make secure storage difficult and make such objects attractive targets for theft and vandalism. A constitutional requirement to seize and hold a vehicle while waiting for a search warrant would place a severe, even impossible, burden on law enforcement. (Arkansas v. Sanders, supra, 442 U.S. at pp. 765-766, fn. 14; United States v. Chadwick, supra, 433 U.S. at p. 13, fn. 7.) Furthermore, given these risks, it can be seen that impound and storage might well be a greater instrusion than immediate search. (See, Chambers v. Maroney, supra, 399 U.S. at pp. 51-52.)

At any rate, it is apparent these additional justifications do not detract from the independent sufficiency of mobility as a basis for the vehicle exception.

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II

IN UNITED STATES V. ROSS, THIS COURT REAFFIRMED MOBILITY AS AN INDEPENDENT JUSTIFICATION FOR THE VEHICLE EXCEPTION

A. The Ross Court's Examination of Carroll Reinforced Inherent Mobility as an Independently Sufficient Justification for the Vehicle Exception.

Acknowledging an indisputable need for clarification in the law of vehicle searches, the Court traced the origin of the vehicle exception and carefully examined the basis for the exception in United States v. Ross, supra, 456 U.S. 798. In particular, the Court examined the Carroll decision and its historical backgound. (Id., at pp. 804-809.) The Ross Court found, as the Carroll Court found, it is consistent with the Fourth Amendment's concerns for preserving the public interests as well as the rights of the individual to allow

the warrantless search of a motor vehicle, when the search is undertaken with probable cause to believe the vehicle contains that which is subject to seizure. (Id., at p. 805; Carroll v. United States, supra, 267 U.S. at p. 149.)

Ross makes it clear the vehicle exception announced in Carroll is based upon the inherent and obvious difference between a vehicle and a structure -- the ability to move. (United States v. Ross, supra, 456 U.S. at pp. 805-806.) The Court concluded:

> "Thus, since its earliest days Congress had recognized the impracticability of securing a warrant in cases involving the transportation of contraband goods. It is this impracticability, viewed in historical perspective, that provided the basis for the Carroll decision. Given the nature of an automobile in transit, the Court recognized

> that an immediate intrusion is necessary if police officers are to secure the illicit substance. In this class of cases, the Court held that a warrantless search of an automobile is not unreasonable." (United States v. Ross, supra, 456 U.S. at pp. 806-807; footnotes ommitted.)

The exception established by Carroll applies if there is probable cause to search a movable vehicle. (Id., at p. 809.) Realizing the possibility a particular application of the rule may appear to be unfair, the Court stated:

> ". . . The rules as applied in particular cases may appear unsatisfactory. They reflect, however, a reasoned application of the more general rule that if an individual gives the police probable cause to believe a vehicle is transporting contraband, he loses the right to proceed on his way without official interference." (Id., at p. 807, fn. 9.)

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B. The Inherent Mobility Associated With a Vehicle Justifies the Application of the Vehicle Exception Even When the Vehicle, Like a Motor Home, is Capable of Supporting a Residential Use.

The fact an individual may display some greater expectation of privacy in a particular vehicle or class of vehicles does not overcome mobility as an independent justification for applying the exception. Contrary to the California Supreme Court's view, privacy expectations have not supplanted mobility as the touchstone of vehicle search analysis. (People v. Carney, supra, 34 Cal.3d at p. 605 [194 Cal.Rptr. 500, 668 P.2d 807]; appen. A to Petn. for Cert. p. 14.)[9/]

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9. Following the Court's opinion in Katz v. United States (1967) 389 U.S. 347, there was renewed awareness that the Fourth Amendment protects privacy

The conclusion enhanced privacy expectations do not overcome inherent mobility is evident from both Ross and Carroll. In reaffirming mobility as the basis for the vehicle exception, the Court in Ross observed:

> "In light of this established history, individuals always had been on notice that movable vessels may be stopped and searched on facts giving rise to probable cause that the vehicle contains contraband, without the protection afforded by a magistrate's

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(Footnote 9 cont.)

interests. (See, Ex parte Jackson (1878) 96 U.S. 727, 733, where the Court found an expectation of privacy in an individual's posted letters and packages.) What Katz added to Fourth Amendment analysis is a two step model to test privacy expectations. First, has the individual exhibited an actual or subjective expectation of privacy? Second, is society prepared to recognize as "reasonable" this subjective expectation? (Katz v. United States, supra, at p. 347 (Harlan, J. concurring); Smith v. Maryland (1979) 442 U.S. 735, 740.) As we shall demonstrate, this

> prior evaluation of those facts." (United States v. Ross, supra, 456 U.S. at p. 806, fn. 8.)

Because they are mobile, society is not prepared to recognize as reasonable any subjective expectations of privacy in the contents of a vehicle. Moreover, Ross indicates individuals have always been on notice that such an expectation is unreasonable.

The configuration and present or potential use of the vehicle or vessel may evidence an actual expectation of privacy.[10/] However,

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(Footnote 9 cont.)

> expectation is not reasonable on the part of a person who has given officers probable cause to believe his vehicle contains matter subject to seizure. (United States v. Ross, supra, 456 U.S. at p. 806, fn. 8.)

10. Individuals have exhibited a subjective expectation of privacy in the contents of vehicles over the years. Cars, for example are equipped with locks and trunks to insure privacy.

configuration and present or potential use do not overcome mobility to place a vehicle outside the vehicle exception. In establishing the vehicle exception, Carroll distinguished automobiles, ships, boats and wagons from structures. (Carroll v. United States, supra, 267 U.S. at p. 153.) Sailors live on ships. The pioneers lived out of their wagons.

(Footnote 10 cont.)

Individuals place their most cherished and intimate possessions in a car expecting them to be secret. Writers's carry manuscripts, professors carry tests, judges carry draft opinions, criminals carry weapons, fruits and evidence. Many members of society engaged in their first intimate contact in the confines of a vehicle parked in a secluded place. Other members of society actually live in their automobiles. (See, South Dakota v. Opperman, supra, 428 U.S. 364, 388, fn. 6, (Marshall, J. dissenting); Wilson, The Warrantless Automobile Search: Exception Without Justification (1980) 32 Hastings L.J. 127, 158; Comment, The Automobile Exception: A Contradiction in Fourth Amendment Principles (1980) 17 San Diego L.Rev. 933, 951-952.)

These vehicles and vessels, which Carroll distinguished from structures, historically served as personal residences with the attendant privacy expectations of a residence.[11] Even though vehicles may serve the identical residential function as a house, Carroll recognized they are subject to different treatment than structures when there is probable cause to search. The reason for the difference

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11. The historical function for these vessels and vehicles contrasts starkly with motor homes like the one that was searched in the instant case. Motor homes and like vehicles are commonly referred to as "recreational vehicles." This term suggests a very different purpose for the vehicle than residence. An individual who goes to the ballpark on a Sunday afternoon would be led to believe a motor home's primary function is to serve as a travelling party.

In this case the record is devoid of any reference to Mr. Carney's use of this vehicle as his personal residence. Thus, his claim is dependant solely on potential use of the vehicle as a residence and speculation.

is due to the inherent ability of the vehicles and vessels to move. (Carroll v. United States, supra, 267 U.S. at p. 153.)

It is therefore apparent the Court in Carroll was not concerned with the configuration of the vehicle or its potential or present use (other than its use to conceal seizable material). Subsequent appellate decisions have applied the reasoning of Carroll to vehicles and vessels which could be used as a residence, and in some cases which served as a residence.[12/] The doctrine therefore applies to Mr. Carney's motor home for the same reason it was applied to Mr. Ross' automobile: both vehicles were mobile.

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12. For application of the vehicle exception to motor homes, see, United States v. Miller (10th Cir. 1972) 460 F.2d 582; State v. Lepley (Minn. 1984)

The policies which supported the original exception still apply to support the vehicle exception's application to Mr. Carney's motor home. Society is entitled to be protected from the danger associated with criminal activity conducted from and in motor vehicles. The danger associated with such criminal activity has magnified during the 60

(Footnote 12 cont.)

343 N.W.2d 41; State v. Mower (Me. 1979) 407 A.2d 729; State v. Million, supra, 583 P.2d 897 [120 Ariz. 10]; State v. Francoeur (Fla.App. 1980) 387 So.2d 1063; State v. Downes (Or.App. 1977) 571 P.2d 914 [31 Or.App. 419]; People v. Uselding (Ill.App. 1976) 350 N.E.2d 283 [39 Ill.App.3d 677]; contra, United States v. Williams (9th Cir. 1980) 630 F.2d 1322; United States v. Wiga (9th Cir. 1981) 662 F.2d 1325; for application of the vehicle exception to ships and boats, see, United States v. Lauchli (7th Cir. 1984) 724 F.2d 1279; United States v. Kaiyo Maru No. 53 (9th Cir. 1983) 699 F.2d 989; United States v. Mesa (5th Cir. 1981) 660 F.2d 1070; United States v. Laughman (4th Cir. 1980) 618 F.2d 1067; United States v. Cadena (5th Cir. 1979) 588 F.2d 100, 102; State v. Roberts (R.I. 1981) 434 A.2d 257.

years since Carroll. The sheer volume of traffic presents a significant hindrance to detection of criminal activity. Vehicles such as motor homes have room to transport vast quantities of drugs, weapons and contraband. Motor homes may even serve as mobile drug laboratories. In addition, the mobility of today's vehicles is far greater than that of the Oldsmobile Roadster in Carroll. Today's vehicles are faster, have better roads to travel, may have off-road capability, and may be fully self-contained. Thus, the exigency which attends inherent mobility exists with greater force in a motor home.

An unreasonable danger would be presented to law enforcement officers if they were required to seize a vehicle and hold it while awaiting a warrant. With ever increasing frequency, police

are being shot and killed in the course of their duties. To seize and hold a vehicle presents an obvious danger to the officer or officers required to perform this function. It also prevents the officers from responding to other situations which require their presence, thereby creating a burden on the public. Moreover, to provide secure storage for the vehicles could be impossible, thereby exposing the public to significant financial liability as well. (See, Arkansas v. Sanders, supra, 442 U.S. at pp. 765-766, fn. 14; United States v. Chadwick, supra, 433 U.S. at p. 13, fn. 7.)[13/]

While the need for the vehicle exception continued to build over time, the privacy interests involved have

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13. As the Court noted in Chambers v. Maroney, supra, 399 U.S. 42, there is no constitutional difference between seizing a vehicle and holding it before

remained constant. Although an individual in a motor home may have a "heightened" expectation of privacy in the contents of his vehicle, his expectation is no higher than the wagoneer's expectation of privacy or the sailor's expectation of privacy in the contents of their vehicles or vessels. The original analysis turned on the inherent mobility of vehicles, and mobility remains to justify application of the vehicle exception to motor homes. Though an individual may believe he is entitled to privacy in the contents of his motor home, he

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(Footnote 13 cont.)

presenting the probable cause issue to a magistrate and carrying out an immediate search without a warrant. (Id., at pp. 51-52.) In the case of a motor home, the analysis applies with equal force. The intrusion of seizing and holding a motor home while a warrant is obtained cannot easily be distinguished from the intrusion of allowing a warrantless search based on probable cause.

sacrifices that right when he provides law enforcement officers with probable cause to believe his operable motor home contains seizable material. (United States v. Ross, supra, 456 U.S. at p. 806, fn. 8.)

* * * * *

III

THE CRITICAL BRIGHT LINE RULE PRESENTED BY AN EXCEPTION BASED ON INHERENT MOBILITY IS A STARK CONTRAST TO THE CALIFORNIA SUPREME COURT'S RULE WHICH IS INCAPABLE OF DEFINITION OR RATIONAL APPLICATION BECAUSE IT IS BASED ON THE SUBJECTIVE ANALYSIS OF VEHICLE CONFIGURATION AND POTENTIAL USE

Following Ross, analysis of a vehicle search involves two questions: first, was there probable cause to search the vehicle; second, was the vehicle capable of movement? It is a test law enforcement officers are capable of applying in a consistent fashion. The analysis provides society and the individual with adequate safeguards. Under such a test, the officers look at objective factors which impact mobility and probable cause, not nebulous factors such as configuration, present use, or likelihood it will be moved.

The mobility analysis presented fulfills the need for a "bright line" approach to search cases. The action taken by an officer upon a moment's reflection will be subjected to microscopic analysis by lawyers and judges over a period of years. In this case, the decision to search has undergone five years of review, now including review by the highest tribunal in the land.

> ". . . the protection of the Fourth and Fourteenth Amendments 'can only be realized if the police are acting under a set of rules which, in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement.' LaFave, 'Case-By-Case Adjudication' versus 'Standardized Procedures': The Robinson Dilemma, 1974 S.Ct.Rev. 127, 142. This is because
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> 'Fourth Amendment doctrine, given force and effect by the exclusionary rule, is

> primarily intended to regulate the police in their day-to-day activities and thus ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged. A highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be "literally impossible of application by the officer in the field."' Id., at 141.

"In short, '[a] single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interest involved in the specific circumstances they confront.'"

> Dunaway v. New York, 442 U.S. 200, 213-214." (New York v. Belton (1981) 453 U.S. 454, 458.)

The Court's decision in Ross was a response to the indisputable necessity for a bright line rule in vehicle search cases. (United States v. Ross, supra, 456 U.S. at pp. 803-804.)[14/] That Ross served to clarify the law in this area was acknowledged by the concurring

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14. The necessity for a bright line approach to vehicle search cases has been repeatedly recognized by this Court. Justice Harlan, in his concurring opinion in Coolidge v. New Hampshire, supra, 403 U.S. at p. 490, referred to the uncertainty then existing as "intolerable." Justice Rehnquist characterized the law relating to searches of vehicles as "something less than a seamless web." (Cady v. Dombrowski, supra, 413 U.S. at p. 440.) More recently, Justice Powell stated that the law of search and seizure with respect to automobiles is intolerably confusing, to the point where the "Court apparently cannot even agree on what it has previously held, let alone on how these cases should be decided." (Robbins v. California, supra, 453 U.S. at p. 430 (Powell, J. concurring).)

justices. (United States v. Ross, supra, 456 U.S. at p. 825 (Blackmun, J. concurring); id., at p. 826 (Powell, J. concurring).)

The ease of application of a rule which centers on probable cause and inherent mobility is evident from the two most recent vehicle search cases ruled on by this Court. In Michigan v. Thomas, supra, 458 U.S. 259, the Court stated:

> "We reverse. In Chambers v. Maroney, 399 U.S. 42 (1970), we held that when police officers have probable cause to believe there is contraband inside an automobile that has been stopped on the road, the officers may conduct a warrantless search of the vehicle, even after it has been impounded and is in police custody. We firmly reiterated this holding in Texas v. White, 423 U.S. 67 (1975). See also United States v. Ross, 456 U.S. 798, 807, n. 9 (1982). It is thus clear that the justification to conduct such a warrantless search does not vanish once the car has been immobilized; nor does it depend

> upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant. See ibid." (Michigan v. Thomas, supra, 458 U.S. at p. 261.)

The Court's most recent vehicle search case followed Thomas and reversed the state court's suppression ruling. (Florida v. Meyers, supra, _____U.S._____ [44 CCH S.CT. Bull.P. B2343, B2344-B2345].) Both cases relied on the inherent mobility attached to the vehicles. The test applies with equal vigor to a motor home.

The California Supreme Court expressly rejected the bright line mobility test and supplanted it with a test based on an individual's expectation of privacy in a vehicle due to the

configuration and potential residential use of a vehicle. (People v. Carney, supra, 34 Cal.3d at pp. 605-608 [194 Cal.Rptr. 500, 668 P.2d 807]; appen. A to Petn. for Cert., pp. 14-26.) The California Court concluded that the expectations of privacy associated with a "motor home" precluded application of the "automobile exception" to justify the warrantless search of this class of vehicle. (Id., at p. 610; appen. A to Petn. for Cert. p. 30.) In so holding, the California Supreme Court not only ignored this Court's decisions in Carroll and Ross, it also created a test incapable of consistent and rational application.

The California Court justifies its holding by stating that motor homes are "hybrids" with the mobility attributes of automobiles and most of the

privacy characteristics of a house. (People v. Carney, supra, 34 Cal.3d at p. 606; appen. A to Petn. for Cert. p. 17.) The characterization of a motor home as a hybrid is of no assistance to law enforcement. This particular hybrid has the characteristics of a chameleon and may cover the entire range of vehicle configurations. In this case, Mr. Carney's motor home was referred to in the record as a "mini motor home," a "camper," a "motor home," and a "van." (JA 12-14, 20-22; RT 8-14.)

The term "motor home" defies objective definition. A subcompact car where the driver keeps a sleeping bag may be "home" just as a Winnebago with interior plumbing and sleeping for six may simply provide transportation. It is wholly impractical to impose on police the burden of assigning a constitutionally

significant value to a person's subjective expectation of privacy according to the shape, make, and present use of a vehicle. The California Supreme Court does not even provide guidance as to what configurations fit this new class of vehicles or what characteristics of those vehicles set them apart from ordinary vehicles. (See, People v. Carney, supra, 34 Cal.3d at p. 614 (Richardson, J. dissenting); appen. A. to Petn. for Cert. pp. 46-48.)

Such a rule should not be given constitutional force. By erasing the bright line of mobility and replacing it with fuzzy concepts of configuration and potential use, the California Supreme Court announces a new search and seizure issue which will require law enforcement to work "at risk" and will both encourage and require years of litigation to fashion into a workable rule.

CONCLUSION

In cases involving the warrantless search of a vehicle, this Court, in Carroll, presented a rule based upon probable cause and inherent mobility. In Ross, the Carroll rule was given new vitality.

On a daily basis law enforcement will come in contact with every imaginable vehicle in infinite situations. The officers will be expected to make reasonable decisions on search and seizure issues based upon objective factors. To ensure these officers are able to perform their functions to protect society and at the same time protect individual rights, bright line rules of general application must be utilized. A vehicle search rule based upon mobility fulfills that requirement.

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In the face of this need for a consistent application of the vehicle exception, the California Supreme Court has substituted a rule incapable of definition, and inconsistent in application. The California Supreme Court's rule places constitutional significance on the configuration and potential use of a class of vehicle they decline to define.

The policy factors which served to support the original exception apply with greater force today to support application of the vehicle exception to all vehicles, including Mr. Carney's motor home.

Accordingly, petitioner respectfully requests this Court reverse the decision of the California Supreme

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Court and reaffirm the vehicle exception established in Carroll and Ross.

Respectfully submitted,

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No: 83-859
October Term, 1983

PEOPLE OF THE STATE OF CALIFORNIA

Petitioner,

v.

CHARLES R. CARNEY,

Respondent

I, THE UNDERSIGNED, say: I am a citizen of the United States, am 18 years of age or over, employed in the County of San Diego in which County the below stated mailing occurred, and not a party to the subject cause, my business address being 110 West A Street, Suite 700, San Diego, California 92101.

I have served the within BRIEF ON THE MERITS as follows: To Alexander L. Stevas, Clerk, Supreme Court of the United States, Washington, D.C. 20543, an original and 3 copies, of which a true and correct copy of the document filed in this cause is hereunto affixed; AND, by placing three copies in a separate envelope addressed for and to each addressee named as follows:

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Each envelope was then sealed and with the postage prepaid deposited in the United States Mail by me at San Diego, California, on the 6 day of June 1984.

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I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, June 6, 1984.

Clifford E. Reed

CLIFFORD E. REED, JR.

Subscribed and sworn to before me
this 6th day of June 1984..

Vida M. Allen

Notary Public in and for said County and State

VIDA M. ALLEN
NOTARY PUBLIC—CALIFORNIA
COUNTY OF SAN DIEGO
My commission expires Aug. 20, 1986